

CODE  
OF  
VIRGINIA

1873



THIRD EDITION

OF THE

CODE OF VIRGINIA:

INCLUDING

LEGISLATION TO JANUARY 1, 1874.

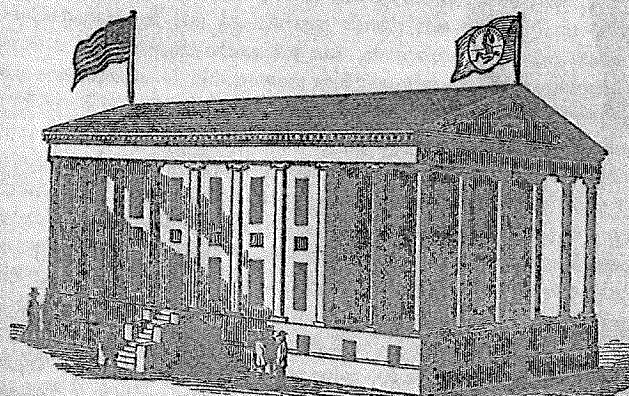
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PREPARED BY

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1873.



OR, ETC. [TIT. 55,

CH. 203.] EXCEPTIONS, WRITS OF ERROR, ETC.

1251

accused; or by reason of  
according to his recogni-  
e in their verdict.\*

judgment may postpone the execution thereof for such time and on  
such terms as it deems proper.

3. A writ of error shall lie, in a criminal case, to the judgment of a  
circuit or a corporation or hustings court from the court of appeals;  
and to a judgment of a county court from the circuit court having ju-  
risdiction over such county. It shall lie in any such case for the ac-  
cused; and if the case be for violation of a law relating to the revenue,  
it shall lie also for the commonwealth. The petition for a writ of error  
from the judgment of the county court may be presented to a judge of  
the circuit in term or vacation, and if allowed, shall be docketed in  
the circuit court having jurisdiction over such county; but, if refused,  
may be presented to the supreme court of appeals or a judge thereof,  
and, if allowed, shall be docketed and heard in said court.

1866-7, c. 209,  
§ 3, p. 937.  
1870-71, c. 34,  
§ 3, p. 30.  
1871-2, c. 252,  
§ 3, p. 335.

TION OF JUDGMENT.

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1866-7, c. 118, p. 944, § 2.  
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ts 1866-7, c. 118, p. 944, § 2.  
previous edition. The act  
during the war, amended  
Acts 1901-2, Extra Session,

4. To a judgment for a contempt of court, other than for the non-  
performance of, or disobedience to a judgment, decree or order, a writ  
of error shall lie when the judgment is of a county court, from the  
circuit court having jurisdiction over such county; when it is of a cir-  
cuit, or a corporation or hustings court, from the court of appeals.

1866-7, c. 209, § 4,  
p. 937.  
1870-71, c. 34,  
§ 4, p. 31.  
21 Gratt., 50.

5. When in any case within this chapter, a writ of error lies from a  
circuit court, it may, in vacation of such court, be awarded by any cir-  
cuit judge; and when it lies from the court of appeals it may, in the  
vacation of said court, be awarded by any judge thereof.

1865-6, p. 179.  
1866-7, c. 209, § 5,  
p. 937.

*When writ of error operates as a supersedeas.*

6. A writ of error awarded under this chapter to any judgment, may  
operate as a supersedeas thereto if the court or judge awarding it so  
direct, on such terms and conditions as the said court or judge may  
prescribe.

*Judgment on the writ of error.*

7. The court from which a writ of error lies, shall affirm the judg-  
ment, if there be no error therein, and reverse the same in whole or  
in part, if erroneous, and enter such judgment as the court, whose error  
is sought to be corrected, ought to have entered, or remand the cause  
and direct a new trial, affirming in those cases where the voices on both  
sides are equal.

Id., § 7.  
21 Gratt., 822,  
825.

*Execution of sentence of death; how certified; when execution to be private;  
who may be present.*

8. Sentence of death, except for insurrection or rebellion, shall not  
be executed sooner than thirty days after the sentence is pronounced.

1866-7, c. 209, § 8,  
p. 931.

9. The clerk of the court pronouncing such sentence, shall, as soon  
as may be after the sentence, deliver a certified copy thereof to the  
officer of said court, who shall cause the sentence to be executed.  
Under such sentence, death shall be inflicted by hanging the convict  
by the neck until he is dead.

Id., § 9.

10. Whenever sentence of death is to be executed, if the convict  
under such sentence be in jail, around or adjoining which there is a  
yard of sufficient size, enclosed by a wall, such sentence shall be exe-  
cuted within such enclosed yard, unless the court by which such sen-

Id., § 10.

tence was pronounced, direct otherwise. At the execution, there shall be present, besides the officers of said court, such other officers and such guard and assistants as the officer executing the sentence shall see fit. He shall request the presence of the attorney for the commonwealth in said court, the clerk thereof, and twelve respectable citizens, including a physician or surgeon; and he shall permit the presence of the counsel of the convict, and such ministers of the gospel as he shall desire, and such of the convict's relations as the officer shall deem prudent.

*Id.*, § 11. 11. The officer executing a sentence of death shall certify the fact to the clerk of the court, who shall file the certificate with the papers in the case.

*Sentence of confinement in penitentiary; record to be certified.*

*Id.*, § 12. 12. Every person sentenced by a court to confinement in the penitentiary shall, as soon as may be, be delivered at the penitentiary by the officer of such court. If he fail to make such delivery within a reasonable time, he shall forfeit one hundred dollars. It shall be lawful for the auditor of public accounts to allow officers conveying persons to the jail or penitentiary the necessary expenses of the prisoner or convict.

*Id.*, § 13. 13. The clerk of the court in which a person is sentenced to the penitentiary, shall forthwith transmit to the superintendent a full copy of the record of the trial and conviction. If he fail so to do, he shall forfeit one hundred dollars.

*Rules as to employment of guards.*

*Id.*, § 14. 1871-2, c. 580, p. 467. 14. The officer who is required to carry a prisoner to the penitentiary, or to any other place, may, if he deem it necessary for his safe conveyance from the starting point to any railroad or line of boats en route to the point of destination, summon one person as a guard for each prisoner to such railroad or boat line, after which the said officer shall retain and have but one guard, unless there be more than two prisoners, and convey them, well secured, to the prison or place of destination, except as follows:

1866-7, c. 523, § 15, p. 936. 15. When the court, judge, or justices by whose judgment or order a prisoner is to be removed shall think a stronger guard proper, and order it, as many persons as may be so ordered shall be summoned by the officer.

*Id.*, § 16. 16. If, on the way to the penitentiary or other place, in consequence of an attempt to rescue the prisoner, made or reasonably apprehended, or in consequence of any other unforeseen danger, the officer is satisfied that a stronger guard than was before summoned is necessary, he may summon such additional guard as is necessary.

*Officer and guard privileged from arrest.*

*Id.*, § 17. 17. The officer and guard, while conveying a prisoner to the penitentiary and other place, and returning therefrom, shall be privileged from arrest, except for felony and breach of the peace, allowing one day for every twenty miles.

*How sentence of imprisonment, until fine is paid.*

18. If a person who is sentenced to be confined and afterwards, until he pay a fine and the costs, fail to pay such fine and costs before the end of the term, he shall continue in confinement until the same be paid, or until ordered by the court; but the additional confinement shall not exceed six months from the end of said term.

*How persons released, who are imprisoned.*

19. Whenever a person is in jail under a capias of any court of this commonwealth, on application to the clerk's office of which such execution issued, or to the court in vacation, such court, or the judge in vacation, if to such court or judge it shall appear proper, may order such person so in jail to be released from imprisonment on the payment of the money mentioned in such execution: in all such applications the attorney for the court from which the execution issued, shall be present, and his assent shall be necessary to such application.

20. Whenever any court of this commonwealth, or any person, convicted of a misdemeanor, to whom a fine is imposed upon such person, or until the fine is paid, the person so convicted shall be confined in the manner provided for in the preceding sections: nothing in this act shall prevent the issue of a writ of habeas corpus for such release from jail.

*Capias to hear judgment in misdemeanor.*

21. No capias to hear judgment shall be issued for a misdemeanor, but the court may process the accused; and if such judgment be for imprisonment or corporal punishment, the court may make such order as may be necessary for the arrest of the person again, and for the execution of the judgment. Such order shall conform, as nearly as may be, to the provisions for the arrest of a person to hear judgment, and all officers charged with the execution shall have the same powers and duties; and be subject to the same liabilities, as provided by law in the case of a person charged with a felony.